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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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SUMMARY RECORD OF THE 1195th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 March 1997, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY-WARNING AND URGENT PROCEDURES (continued)

Bosnia and Herzegovina

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Status of implementation of the Convention in States parties whose reports are excessively overdue

Jordan

Nepal

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The meeting was called to order at 10 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY-WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Bosnia and Herzegovina

1. At the invitation of the Chairman, the members of the delegation of Bosnia and Herzegovina took seats at the Committee table.

2. Mr. JERKIĆ (Minister/Counsellor, Ministry of Foreign Affairs of Bosnia and Herzegovina) informed the members of the Committee about the current situation in his country. He recalled the consequences of the terrible tragedy it had experienced from 1992 to 1995, in particular the "ethnic cleansing", a euphemism designating the extermination of an ethnic group: more than 200,000 people had been killed, and as many wounded; 13,000 persons had been disabled; 20,000 children had been orphaned; and more than 20,000 people were reported missing. Furthermore, almost half of the country's pre-war population were now in exile, and its entire economic and social infrastructure had been destroyed. The situation was therefore extremely complex, and, 15 months after the signing of the Dayton Peace Accords, Bosnia and Herzegovina was still facing enormous problems.

3. Among the negative aspects was the lack of a political will among the parties in power and the fact that the real problems were not being confronted directly. Unless all the institutions needed at the State level to establish the rule of law were set up, it would be very difficult to make headway with national reconstruction.

4. Among the positive elements, it should be noted that the Constitution established the highest possible standards in the field of the protection of human rights. Some 22 international instruments had been incorporated into the Constitution and were now an integral part of it. The two mechanisms called for by the Dayton Accords, namely, the ombudsman and the Human Rights Chamber, were functioning. There was also one commission to handle the problems of displaced persons and refugees, and another to study property claims. With the help of experts from the Council of Europe, an effort was being made to align the constitutional provisions of the two component entities of Bosnia and Herzegovina with those of the national Constitution. Despite that strong legal framework, however, the consequences of the war were difficult to overcome, and, in order to move forward, it was essential that the parties in power should show political will and that the international community act in unison.

5. Mr. van BOVEN (Country Rapporteur) welcomed the presence of the delegation of Bosnia and Herzegovina, stating that the urgent procedure was even more valuable when the Committee could hold a dialogue with the State party concerned. He stressed the fundamental importance of the Convention in relation to the situation in Bosnia and Herzegovina.

6. He wished to take advantage of the presence of the State party's representatives to inquire what kind of contribution the Committee could make. He recalled the two decisions adopted by the Committee on Bosnia and Herzegovina at its forty-eighth and forty-ninth sessions and quoted several passages therefrom. Unfortunately, the specific proposals made by the

Committee in those decisions had been largely ignored, no doubt because they had not been brought to the attention of the competent persons. He had recently sent a message to the High Commissioner for Human Rights asking him to consult his representatives in Sarajevo on the matter and to request their views on a possible role for the Committee, but had not yet received a reply. He also noted that the Special Rapporteur of the Commission on Human Rights on Bosnia and Herzegovina, who had stated in his report that education in the field of human rights was a critical need in all parts of the former Yugoslavia, had not taken up the Committee's offer on that matter. He regretted the lack of coordination between the secretariats, stressed the need to ensure that the Committee's decisions were indeed conveyed to the persons to whom they were addressed and inquired what the delegation's initial reaction was to the proposals made by the Committee at its previous sessions.

7. Mr. RECHETOV welcomed the continuation of direct contact with State party representatives. Following the elimination of apartheid in South Africa and the historic Middle East accords, everyone hoped that the region of Bosnia and Herzegovina would also become one of stable development. Noting that Macedonia had already submitted a report to the Committee and that Yugoslavia was preparing to do so, he wondered when Bosnia and Herzegovina was planning to submit its report and whether the "entities" referred to by the representative would take part in the drafting process and be invited to present their views.

8. He asked whether it was true that no one had been tried by the international Criminal Tribunal in The Hague for the crime of "ethnic cleansing" and whether any inquiries had been conducted to obtain precise information on that phenomenon, which undoubtedly constituted the principal human rights violation committed during the war.

9. Mr. de GOUTTES fully endorsed the observations of Mr. van Boven on the follow-up to the Committee's recommendations. Rather than making more and more recommendations, it was important to ensure that those adopted were followed up. The delegation should furnish more complete information on the human rights institutions to which it had referred. A preliminary assessment of their activities and of the functioning of the International Tribunal would enable the Committee to determine more precisely the specific contribution it might make.

10. Mr. ABOUL-NASR also wished to ask the delegation what type of assistance the Committee could provide. The Committee could not at present ask Bosnia and Herzegovina to submit a report, as the country was just emerging from an extremely serious episode in its history.

11. He did not think that persons who represented "entities" as opposed to the Government could be invited to submit the report. It was for the Government to decide the composition of its delegation.

12. He hoped that the delegation would express its views on the International Criminal Tribunal in the Hague.

13. Mr. SHERIFIS said the Committee should confine itself to consideration of the implementation of its recommendations on Bosnia and Herzegovina. The government representative had referred to the tragedy of ethnic cleansing. Nothing could justify that practice, and the guilty should be prosecuted. At

its forty-second session, the Committee had adopted General Recommendation XVII, on the establishment of national institutions to facilitate the implementation of the Convention. That recommendation should be put into effect, particularly with regard to the implementation of article 5 of the Convention. It was for States parties to decide on the composition of their delegation.

14. Mr. WOLFRUM said he hoped that the next reports of Bosnia and Herzegovina would inform the Committee of measures taken in aid of the many refugees and displaced persons on its territory. Perhaps the Committee could be of assistance to it in that field?

15. Mr. JERKIČ (Bosnia and Herzegovina) expressed his gratitude to the members of the Committee who had clearly stated that it was for States parties alone, as sovereign bodies, to determine the composition of their delegation.

16. The Ministry of Foreign Affairs was one of the main institutions responsible for implementing the Dayton Accords. In order to prepare for the present meeting, it had sent a letter to the Croat-Muslim Federation and the Serbian Republic of Bosnia, asking for information that might have been useful to the Committee. Only the Federation had responded. He was aware of the fact that, in submitting a report on the implementation of the Convention, his country would benefit from the assistance and advice of the Committee. Every effort would therefore be made to submit the report as soon as possible.

17. His Government believed that cooperation between the persons and institutions endeavouring to assist Bosnia and Herzegovina could be improved. There was frequently some overlap between the various programmes implemented or resources were misdirected.

18. He urged the Committee not to abandon Bosnia and Herzegovina, as the problems remained. Contacts could be closer between the Government and persons dealing with human rights, whether in Geneva or in Bosnia and Herzegovina. As to education in the field of human rights, the Committee could make proposals and recommendations to the Government.

19. Although ethnic cleansing was no longer occurring on the same scale as before the Dayton Accords, there were still discriminatory policies which used subtler methods with regard to either employment or property.

20. On the subject of the International Criminal Tribunal, real cooperation was needed between all the interested parties and between them and the Tribunal, but that was currently lacking. The perpetrators should be punished, not only legally but also psychologically, so as to enable the reconstruction of the country to go ahead and to ensure that the efforts it had made had not been in vain. The Government was doing everything in its power, but was relying on the international community to encourage the cooperation of those who were not cooperating in order to restore confidence in the country.

21. The CHAIRMAN assured the delegation that the Committee would not abandon Bosnia and Herzegovina, or indeed any group or person entitled to protection under the Convention. The Committee had taken the case of Bosnia and Herzegovina to heart. He welcomed the delegation's suggestions for increased

contacts between the Government and the United Nations. The Committee would remain in contact with the Government so as to take any further step that might be appropriate under the urgent procedure.

22. The delegation of Bosnia and Herzegovina withdrew.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Status of implementation of the Convention in States parties whose reports are excessively overdue

Jordan

23. At the invitation of the Chairman, the members of the delegation of Jordan took seats at the Committee table.

24. Mr. HADDAD (Jordan) commended the Committee for the efforts it was making to eliminate all forms of racial discrimination throughout the world. His Majesty King Hussain and His Highness the Crown Prince stressed in all their statements, both in Jordan and abroad, the need to strengthen democracy, to ensure the rule of law, and to eliminate racial discrimination, violence and terrorism. Jordan disseminated all the human rights instruments in Arabic and put them into effect. National law could not contravene those instruments, including the Convention. In recent years, the Government had taken many steps to combat racial discrimination and was currently preparing a detailed report on implementation of the Convention, which it would submit to the Committee during the course of the year.

25. Article 6, paragraph 1, of the Constitution provided that all Jordanians were equal with regard to rights and obligations, irrespective of their ethnic origin, religion or language. Under article 22, paragraph 1, all Jordanians had the right to hold posts, permanent or otherwise, in public departments, depending on their competence and skills.

26. In 1991, Jordan had established the main features of its social and political activity in a National Charter, paragraph 7 of which provided for respect for the human being and his right to express a different opinion. The preamble of the Charter stated that Jordanian men and women were equal before the law, irrespective of their ethnic origin, religion or language.

27. Article 20 of the Political Parties Act of 1992 stated that Jordanians had the right to form political parties, provided that those parties respected the Constitution and the rule of law, the principle of political plurality, and the independence and security of Jordan. Political parties were required to combat violence in all its forms, and ethnic discrimination. Article 24 made any violation of those provisions punishable by law.

28. Article 40 of the Press and Publications Act of 1993 banned any publication that denigrated any religion, while article 4 banned publications that endangered national unity or incited criminal acts. Article 8 stated that no publication could contain articles which infringed the dignity or reputation of citizens. Any violation of the provisions of that Act carried a fine, but the Government had initiated a reform aimed at increasing the relevant penalties.

29. In 1996, the Government had enacted a law establishing the Centre for Studies on Freedom, Democracy and Human Rights. Article 7 (a) of that law penalized any violation of human rights and was aimed at protecting citizens against any form of religious discrimination. Article 7 (c) dealt with respect for Islamic tradition. Article 8 provided that any violation or abuse brought to the Centre's attention would give rise to legal action.

30. Following government initiatives, measures had recently been taken to authorize the presence of Amnesty International on Jordanian territory and to permit the establishment of a human rights defence group and the activities of an Arab human rights organization, whose steering committee had recently been formed.

31. He read out several articles from the Jordanian Penal Code, particularly articles 150, 151, 152 and 276, which stipulated that fines or prison sentences could be imposed for any incitement to racial discrimination, any insult or attack against any religion, or any disruption of order within any kind of religious assembly.

32. He stressed that his Government was prepared to cooperate actively with the Committee in all areas within its competence.

33. Mr. van BOVEN (Country Rapporteur) said he was very pleased that Jordan had renewed its dialogue with the Committee, given that its periodic report was long overdue; that lapse was not, however, systematic, as Jordan had reported regularly to the Human Rights Committee, the Committee on the Rights of the Child and the Committee against Torture.

34. The representative of Jordan had said that racial discrimination did not exist in his country; in fact, that was what Jordan had already stated in its eighth periodic report, considered in 1990 (CERD/C/183/Add.1, para. 120). However, the Committee was not entirely convinced by statements of that sort, as racial discrimination was defined extremely broadly in article 1 of the Convention and it was difficult to be certain that no discrimination existed in any of the areas cited. The Jordanian authorities should specify whether equal rights really existed in all respects for the Jordanian Bedouins and Palestinians, for example. In its next report, whose publication had already been announced, Jordan should not merely quote legal texts but should devote more attention to the actual situation.

35. With regard to article 8, paragraph 6, of the Convention governing the activities of the Committee, the General Assembly had adopted an amendment by which the Committee's expenses would henceforth come under the regular budget of the United Nations, and had recommended that States parties should ratify the amendment. The amendment would have to be ratified by two thirds of all States parties in order to enter into force. He hoped that Jordan would agree to the amendment, which was entirely a matter of form, and ratify it without hesitation.

36. Mr. WOLFRUM asked the representative of Jordan to say whether the Convention and other human rights treaties had to go through a process of incorporation into Jordanian law before becoming an integral part of that law, or whether they could be invoked directly. During the consideration of

Jordan's sixth and eighth periodic reports, the Committee had been told that a certain proportion of seats in the Jordanian Parliament were reserved for members of minorities. Was that rule still in effect?

37. Like the Country Rapporteur, he was somewhat sceptical of assertions that racial discrimination did not exist in a particular society. The next report of Jordan should dispel that scepticism and to that end should not be limited to restatements of constitutional law: it should provide concrete information on the implementation of the Constitution and the daily use to which it was put. The statistics that appear in that report would be very useful.

38. Mr. de GOUTTES agreed with Mr. van Boven that the Committee found it difficult to accept wholeheartedly the assertion that there was no racial discrimination in a particular country. However, after having made such a statement, the representative of Jordan had referred to criminal legislation making an act of racial discrimination a criminal offence, if only on a preventive basis that in itself represented an initial response to the concerns of the Committee.

39. According to the eighth periodic report of Jordan (CERD/C/183/Add.1, para. 51), candidates for naturalization should not compete with Jordanians on the labour market. At that time (1990) the Committee had raised the question whether such a provision might not have discriminatory effects vis-á-vis article 5 (e) (i) of the Convention. He asked for additional information on that point. The delegation did not have to respond immediately but was at liberty to do so in its next periodic report.

40. Mr. ABOUL-NASR said that Jordan was known throughout the Arab world as a land of asylum where many strangers fleeing less hospitable countries settled permanently. Undoubtedly the next periodic report would refer to the non-Jordanians, of whom many, such as Armenians and Palestinians, played a prominent role in Jordanian society. Egypt, of which he was a national, looked to the example of Jordan to give effect to article 4 of the Convention, in its own Penal Code, so as to minimize the risks involved in proclaiming, no doubt somewhat hastily, that racial discrimination did not exist.

41. He was not sure that it was really discriminatory for a State to adopt a policy of giving priority to nationals in the field of employment. The European Union, for example, did exactly that. Perhaps the members of the Committee with competence in that field would be asked for their views.

42. Mr. AHMADU said he was greatly looking forward to receiving the next periodic report of Jordan. Aside from Egypt, it seemed to be the Arab country whose women enjoyed the greatest emancipation, and he very much hoped the report would include a section or chapter on women. The report should also describe institutions for minority groups, since there were apparently some discriminatory employment rules in Jordan. On that issue the question arose whether the implementation of such rules was not based on prior agreements.

43. Mr. SHERIFIS stressed the importance for the Committee of engaging in regular dialogue with all States parties to the Convention. As the Country Rapporteur had said, Jordan should ratify the amendment to article 8, paragraph 6, of the Convention as soon as possible.

44. It was well known that Jordan had an excellent human rights record. It was precisely because of that good record that the Government should consider making the declaration under article 14 of the Convention, by which the State party recognized the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State party of any of the rights set forth in the Convention. Most States parties to the Convention had refrained from making such a declaration. but the Committee would welcome the possibility of engaging in an ongoing dialogue with Jordan.

45. Mr. HADDAD (Jordan) said that as soon as he returned to Jordan, at Mr. van Boven's request, he would encourage the Government to ratify the amendment to article 8, paragraph 6, of the Convention.

46. Addressing himself to all members of the Committee he said that Jordan had made a serious commitment with regard to implementation of the Convention. It took precedence over all national legislation, and once a foreigner was naturalized, he fully enjoyed all the rights accorded to Jordanians born in the country. The law could not be circumbented in that regard. As to the electoral law, the division into districts was carried out in accordance with a list annexed to that legislation. The districts of the capital, Amman, had always reserved a number of seats for circassians, Chechens and so forth. Christians, who represented 4 per cent of the total population, had more than 11 per cent of the seats in Parliament reserved for them.

47. He and his colleagues would endeavour to answer precisely all the questions raised by including as many concrete statistics as possible in Jordan's next periodic report.

48. The CHAIRMAN said that the Committee would have more time available when it came to deal with that report. The present resumption of contact with the State party, however, had already proved extremely useful.

49. The delegation of Jordan withdrew.

Nepal

50. At the invitation of the Chairman, Mr. Simkhada (Nepal) took a seat at the Committee table.

51. Mr. SIMKHADA (Nepal) said that constraints on human resources, and the rapid political changes under way in Nepal, were responsible for the reporting delay. However, with the technical assistance of the Centre for Human Rights, his Government should be able to submit its periodic report shortly, for consideration by the Committee at its next session. It was being prepared by the Ministry for Women and Social Welfare.

52. In the meantime, Nepal had undergone a major political and institutional transformation, which had improved the situation of human rights, including the elimination of racial discrimination.

53. Since the political transformation initiated in 1990 by the People's Movement, Nepal had become a popular democracy with a constitutional monarchy. The 1990 Constitution guaranteed basic human rights to every citizen; adult

franchise; a parliamentary form of Government; and a multi-party system. It also guaranteed the independence of the judiciary and the legislature, with a democratically elected Parliament.

54. The Constitution prohibited discrimination against any citizen on grounds of religion, race, sex, caste, tribe or ideological conviction. Any discrimination against untouchables was punishable by law. The right to constitutional remedies was guaranteed. A bill on compensation for torture victims had been passed by the House of Representatives in 1996 and an act establishing an independent human rights commission answerable to Parliament had been promulgated.

55. All those developments had resulted in a positive change in the human rights situation in general, which would be reflected in Nepal's next periodic report.

56. Mrs. SADIQ ALI (Country Rapporteur) said she was pleased that Nepal intended to submit information to the Committee at its next session. She hoped that on that occasion the State party would give the Committee all the information it needed on the many positive developments that had taken place in the country since its previous report, submitted in 1987. The Committee would also be pleased to receive the excerpts from the Constitution which had a bearing on the Convention and to learn what important residual powers the King continued to exercise.

57. Under the Constitution, Nepal was not a Hindu State. Nonetheless, there was concern among non-Hindus that a constitutional prohibition of the conversion of other persons could be used to limit the expression of religious beliefs. Was that provision still in force?

58. Given that Nepal had over 75 ethnic groups speaking 50 languages, the Committee also needed to know the ethnic composition of the population, particularly in the underdeveloped areas. Since the Constitution protected the right of each community to preserve and promote its language, script and culture, to operate schools up to the primary level in its mother tongue and to conduct lessons by radio in the local language, she would welcome more information on the innovative methods used and the number of tribes they covered.

59. In the light of reports from human rights groups that the languages of some ethnic communities were nearly extinct and other groups were losing their culture, it was essential that the Committee should receive detailed information on those matters.

60. Discrimination against certain castes and vulnerable groups, including women in the rural areas of western Nepal, was widespread, despite the provisions of the Constitution prohibiting any discrimination on grounds of sex or caste. That state of affairs seemed to indicate that the Government had not taken effective action to implement the provisions.

61. Recalling that in its report of October 1995 (A/50/40), the Human Rights Committee had said it was disturbed by several practices linked to the caste system, she asked whether there were any provisions prohibiting the exploitation of certain castes and whether any measures had been taken to

eliminate that backward system, in conformity with articles 1 and 2 of the Convention. She would also like to know how many persons, if any, had been punished pursuant to those provisions.

62. It would also be interesting for the Committee to know whether the Government had attained the main objective it had mentioned during consideration of the previous report (see CERD/C/SR.787), namely, to remove imbalances between regions in terms of infrastructure and public services, for example. Could the Government provide the relevant social indicators?

63. With regard to article 3, she inquired whether forced or compulsory labour and slavery were still being imposed on members of certain castes, particularly in the countryside. What action had the Government taken or was it planning in order to put an end to those practices?

64. With reference to the implementation of article 4, she inquired whether the new Government intended to withdraw the reservation it had expressed in submitting its previous report. Concerning article 5, she wished to know the composition, terms of reference and procedures of the permanent human rights commission established by Parliament to investigate human rights abuses.

65. She commended Nepal for having established, by Act No. 2047 of 1990 relating to treaties, the primacy of international instruments, including the two International Covenants and the Convention against Torture, over domestic law.

66. She asked the delegation to explain the procedure for the proclamation and administration of a state of emergency and the derogations permitted. The Government should also explain the quasi-judicial authority given to the Chief District Officer for directing the police to prevent public disturbances and violence. To what extent did the Supreme Court ruling that the 1992 Labour Act and the 1991 Nepali Citizenship Act were unconstitutional affect the implementation of article 5 (e) (i) and (iii) and (d) (iii) of the Convention?

67. Nepal prohibited torture, but it was not defined as a crime, as required by the Convention against Torture. Did the Government intend to reconsider that question? How many people had been compensated under the Compensation Act passed in 1996?

68. Noting that an amnesty had been announced for all political prisoners, she inquired whether it applied to the detainees in the prisons of central Nepal. There was perhaps a contradiction between that information and the report from the United States Department of State that more than 3,000 persons were being held while awaiting trial. Could the delegation provide more information?

69. In connection with article 5 (e) (v), she wished to know the results of the Government's 12-year literacy programme, directed at 8 million people aged between 6 and 45.

70. In relation to article 6, she asked whether there had been any cases of racial discrimination in which the plaintiffs had been able to take their case before a competent national court with the assistance of an attorney, given that court-appointed lawyers were designated only upon request, which was

unfair to victims who were unaware of that possibility. Similarly, she wished to know whether the Government planned to reduce the cost of bail and other legal fees so as to facilitate access to justice for persons of limited means.

71. States parties were obliged periodically to provide information on measures they had adopted to give effect to article 7.

72. She asked why there were 4,000 refugees without identity cards in the Kathmandu valley and whether the acts of discrimination perpetrated by the former regime against the Tibetan refugees had ceased.

73. Citing the European Parliament report that conditions in the refugee camps had deteriorated, especially as concerned medical care and education, she inquired whether the Governments of Bhutan and Nepal had reached an agreement to organize the early voluntary repatriation of the refugees and whether progress had been made in that regard.

74. It should be stressed that the text of the Committee's report and concluding recommendations should be distributed in all the main languages of the country, so that they could be the subject of public discussion. The Convention should be included in school curricula and in training for the judiciary, judges and law enforcement officials, and its main provisions should be brought to the attention of the general public.

75. Under article 8, States parties were called upon to pay their contributions so that the Committee could function effectively. She called upon Nepal to make the declaration under article 14 on communications from individuals claiming to be the victims of violations of rights under the Convention.

76. Mr. FERRERO COSTA expressed the hope that Nepal would submit its next report as soon as possible and called upon it to withdraw its reservations to articles 4 and 22 of the Convention. It should also send the Committee the text of Act No. 2047 of 1990 relating to treaties, which provided that the Convention could be directly invoked in domestic law. He further hoped that Nepal would provide the information asked of it 10 years earlier on measures taken to ensure the implementation of articles 6 and 7 of the Convention.

77. Mr. de GOUTTES inquired whether the reservation referred to by Mrs. Sadiq Ali concerned only article 4 or whether it was broader in scope. He hoped that Nepal would consider withdrawing the reservation and asked it to provide the Committee with more information on the recently established human rights commission.

78. The CHAIRMAN invited Mr. Simkhada (Nepal) to reply to members' questions at its next meeting.

The meeting rose at 1 p.m.